

**\*\*§ 362 INFORMATION SHEET\*\***THE POWELL LITIGATION GROUP,  
P.C.

BK - S-12-15555-MKN

DEBTOR

BANKRUPTCY #

MOTION #

BANK OF NEVADA

7

MOVANT

CHAPTER

**Certification of Attempt to Resolve the Matter Without Court Action***Moving counsel hereby certifies that pursuant to the requirement of LR 4001(a)(5), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.*Date: Oct. 18, 2012Signature: 

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: Collateral consisting of all accounts, including funds held in IOLTA account, arising from Bank's properly perfected security interest.

NOTICE SERVED ON: 10/18/2012

DEBTOR(S)



DEBTOR(S)' COUNSEL



TRUSTEE



DATE OF SERVICE: 10/18/2012

**MOVING PARTY'S CONTENTIONS:****DEBTOR'S CONTENTIONS:**

THE EXTENT and PRIORITY of LIENS:

THE EXTENT and PRIORITY of LIENS:

1ST Terminate the Stay under section 362(d)(1) for payment of \$220,021.19 from to Bank, as Collateral consisting of accounts, including IOLTA account, is fully encumbered by the Bank's properly perfected, first position security interest per UCC-1s.

1ST

2ND Waive the 14-Day Stay Under Rule 4001(a)(3)

2ND

3RD

3RD

4TH

4TH

OTHER

OTHER

TOTAL ENCUMBRANCES:

TOTAL ENCUMBRANCES:

APPRAISAL or OPINION as to VALUE:

Not applicable

APPRAISAL or OPINION as to VALUE:

**TERMS of MOVANT'S CONTRACT**

with the DEBTOR(S)::

AMOUNT OF NOTE: \$1,921,424.28

INTEREST RATE: 7.00% per annum

DURATION: 36 months

PAYMENT PER MO.: 35 payments at \$38,146.85 and 1 irregular payment at \$889,172.62

DATE OF DEFAULT: February 1, 2012

AMOUNT IN \$1,861,128.26

ARREARS:

DATE OF NOTICE OF March 14, 2012

DEFAULT:

SPECIAL CIRCUMSTANCES

**DEBTOR'S OFFER OF "ADEQUATE PROTECTION" for MOVANT::**

SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

Signature:

1 Richard F. Holley, Esq. (NV Bar No. 3077)  
Email: rholley@nevadafirm.com  
2 Ogonna M. Atamoh, Esq. (NV Bar No. 7589)  
Email: oatamoh@nevadafirm.com  
3 COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON  
4 400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
5 Telephone: 702/791-0308  
Facsimile: 702/791-1912  
6 *Attorneys for Bank of Nevada*

E-filed on: October 18, 2012

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 In re:  
11 THE POWELL LITIGATION GROUP, P.C.,  
12 Debtor.

Case No. BK-S-12-15555-MKN  
Chapter 7

**MOTION TO TERMINATE AUTOMATIC**  
**STAY PURSUANT TO 11 U.S.C. §**  
**362(d)(1) AND WAIVE 14-DAY STAY**  
**UNDER FRBP 4001(a)(3)**

14 Date of Hearing: November 20, 2012  
15 Time of Hearing: 10:00 a.m.  
16 Place: Courtroom No. 2, Third Floor  
Foley Federal Building  
300 Las Vegas Blvd., S.  
Las Vegas, NV 89101

17 Judge: Hon. Mike K. Nakagawa  
18

19 Secured Creditor Bank of Nevada (the "Bank"), through their counsel, Richard F. Holley,  
20 Esq. and Ogonna M. Atamoh, Esq. of the law firm of Cotton, Driggs, Walch, Holley, Woloson &  
21 Thompson, hereby files this Motion to Terminate the Automatic Stay Pursuant to 11 U.S.C. §  
22 362(d)(1) and Waive 14-Day Stay Under FRBP 4001(a)(3). (the "Motion").

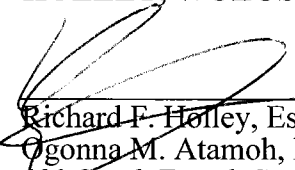
23 This Motion is based on the following grounds and the following reasons: (1) the Bank seeks  
24 an order terminating the automatic stay under Section 362(d)(1) for cause to allow the Trustee to  
25 pay the Bank of \$220,021.19 from the funds in the amount of \$2,615,823.64 currently held in the  
26 IOLTA Account arising from the Bank's properly perfected, first position security interest in a  
27 portion of the funds held in the IOLTA Account; (2) according to the Trustee's accounting, of  
28 the \$2,615,823.64 held in the IOLTA account, \$416,521.01 in costs and \$96,282.28 in fees are

1 owing to Powell Litigation (the "PLG Funds"), a portion of which funds are subject to  
2 interpleader actions currently pending in State Court; (3) of the PLG Funds, \$220,021.19 of the  
3 funds are not subject to interpleader actions, consisting of \$190,651.31 of Costs due to Powell  
4 Litigation and \$29,369.88 due and owing to Powell Litigation for Fees. The Bank is seeking  
5 stay termination to allow payment to the Bank from the IOLTA Account in the amount of  
6 \$220,021.19, pursuant to the Bank's properly perfected, first position security interest in the  
7 funds; and (4) separate and apart from the IOLTA Account, the Trustee is holding \$271,427.57  
8 in the Debtor's operating account, which the Trustee is using in part to administer the estate,  
9 which funds the Bank is not seeking as part of the stay termination Motion. The Bank is not  
10 waiving its rights to the funds in the Operating Account or any of the other funds remaining in  
11 the IOLTA Account to which medical providers or patients are not entitled.

12 This Motion is based upon the pleadings and records on file herein, the Memorandum of  
13 Points and Authorities set forth below and the exhibits attached hereto, and the Declaration of  
14 Conrad Noriega (the "Noriega Declaration"), a Vice President with Bank in the Legal and  
15 Recovery Department, and the Declaration of Ogonna M. Atamoh, Esq. (the "Atamoh  
16 Declaration"), one of the Bank's attorneys, filed separately and concurrently with the Court  
17 pursuant to Rule 9014(c)(2) of the Local Rules of Bankruptcy Practice, all papers, and pleadings  
18 on file with this Court, and any oral argument entertained by this Court in connection with the  
19 Motion.

20 DATED this 18<sup>th</sup> day of October, 2012

21 **COTTON, DRIGGS, WALCH,**  
22 **HOLLEY, WOLOSON & THOMPSON**

23   
24 Richard F. Holley, Esq. (NV Bar No. 3077)  
25 Ogonna M. Atamoh, Esq. (NV Bar No. 7589)  
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*Attorneys for Bank of Nevada*

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

The Debtor borrowed nearly \$2 million from the Bank to fund the personal injury litigation to pay for litigation fees and costs. The Bank holds a first position, properly perfected security interest in the settlement proceeds held in the IOLTA account derived from the litigations commenced by the Debtor, as evidenced by the Security Agreements and UCC-1 Financial Statements filed with the Nevada Secretary of State on May 13, 2008. The Bank commenced a State Court action for the appointment of receiver over Powell Litigation, as Powell Litigation had failed and/or refused to make any payments to the Bank under the Loan Documents (defined below). One day before the hearing on the Motion to Appoint Receiver was held, Powell Litigation filed for Chapter 7 Bankruptcy relief.

David A. Rosenberg was appointed the Chapter 7 Trustee over the Powell Litigation bankruptcy case. The Trustee prepared an accounting to determine which funds belonged to the medical providers, the clients, and the Glen Lerner Firm and the Bank arising out of the retainer agreements and fee splitting agreement with the Glen Lerner Firm and the Bank. In September 2012, the Trustee provided the Bank with an accounting of the \$2,615,823.64 in funds held in the IOLTA account, delineating the funds attributable to medical providers, the clients, the Glen Lerner Firm and the Bank. Of the \$2,615,823.64 in the IOLTA account, the Trustee's accounting reflects that there are \$416,521.01 in costs due and owing to Powell Litigation and \$96,282.28 in fees owing to Powell Litigation (the "PLG Funds"), a portion of which are subject to interpleader actions currently pending in State Court.

Of the PLG Funds, \$220,021.19 of the funds are not subject to interpleader actions, consisting of \$190,651.31 of Costs due to Powell Litigation and \$29,369.88 due and owing to Powell Litigation for Fees. The Bank is seeking an order terminating the automatic stay for cause under Section 362(d)(1) to allow the Trustee to pay the Bank a portion of the funds held in the IOLTA Account attributable to the Bank in the amount of \$220,021.19, pursuant to the Bank's properly perfected security interest in the funds.

1 This is a Chapter 7 case, and the Bank's Collateral is fully encumbered, leaving no  
2 benefit to the estate in connection with the PLG Funds designated in the Trustee's Report as  
3 Powell Litigation funds. No other creditors are entitled to receive any portion of the funds  
4 designated in the Trustee's Report as the PLG Funds, consisting of \$416,521.01 in costs and  
5 \$96,282.28 in fees owing to Powell Litigation, to which the Bank is entitled as a properly  
6 perfected secured creditor. Additionally, the waiver of the 14-day stay of the order terminating  
7 the stay is appropriate, as the Bank is only seeking a partial payment of \$220,021.19 from the  
8 IOLTA Account to which no other creditor is entitled, resulting in a balance of \$292,782.10 of  
9 the funds designated in the Trustee's Report as PLG Funds, and leaving an overall balance of  
10 \$2,395,802.45 in the IOLTA Account.

## 11 **II. STATEMENT OF FACTS**

### 12 **THE LOAN TRANSACTION**

13 1. On or about September 3, 2008, Paul D. Powell ("Powell") and Bank entered into  
14 a Business Loan Agreement for a loan to Powell in the amount of \$300,000.00 ("Loan") for  
15 business operations, with a maturity date of September 3, 2009. A true and correct copy of the  
16 September 3, 2008 Business Loan Agreement and Disbursement Request and Authorization is  
17 attached to the Noriega Declaration as **Exhibit "1"**. The Loan was extended by Bank to Powell  
18 to finance personal injury litigation by Powell.

19 2. On or about September 3, 2008, Powell executed a Promissory Note in favor of  
20 Bank in the principal amount of \$300,000.00 (as amended or supplemented, the "Note"). A true  
21 and correct copy of the Promissory Note is attached to the Noriega Declaration as **Exhibit "2"**.

22 3. Pursuant to the terms of the Note, the unpaid principal balance bears interest at a  
23 variable rate of 1.500 percentage points over the Prime Rate as published in the Wall Street  
24 Journal (the "Index"). The initial and floor interest rate was 7.5% per annum based on a 360-day  
25 year. The Note provides a single payment of the entire unpaid principal balance, plus accrued  
26 interest at maturity and for monthly payments of all accrued interest beginning October 3, 2008.  
27 The maturity date under the Note was September 3, 2009 ("Maturity Date").

28

1           4.       On or about October 13, 2008, Borrower and Bank renewed the loan in the  
2       amount of \$300,000.00, based upon the Note. Borrower and Bank also entered into a Change in  
3       Terms Agreement modifying the Note. The Note was modified to extend the Maturity Date to  
4       April 13, 2014, to discontinue the revolving line of credit feature, to change the borrower's name  
5       to Powell Litigation, to add collateral, to add the guaranty of Powell, to change the payment  
6       schedule to interest only payments from November 13, 2008 to April 13, 2009 and then  
7       payments of principal and interest each month beginning May 13, 2009, and to raise the floor  
8       interest rate to 8.00%. A true and correct copy of the October 13, 2008 Business Loan  
9       Agreement, Disbursement Request and Authorization, and Change in Terms Agreement is  
10      attached to the Noriega Declaration as **Exhibit "3"**.

11           5.       On or about February 27, 2009, Borrower and Bank renewed the loan and  
12      increased the principal amount to \$500,000.00, based upon the Note. Borrower and Bank also  
13      entered into a Change in Terms Agreement modifying the Note. The Note was modified to  
14      increase the principal amount to \$500,000.00, to change the payment schedule to interest only  
15      payments from March 13, 2009 to April 13, 2009 and then payments of principal and interest  
16      each month beginning May 13, 2009, and to lower the floor interest rate to 7.25%. A true and  
17      correct copy of the February 27, 2009 Business Loan Agreement, Disbursement Request and  
18      Authorization, and Change in Terms Agreement is attached to the Noriega Declaration as  
19      **Exhibit "4"**.

20           6.       On or about July 8, 2011, Borrower and Bank renewed the loan and increased the  
21      principal amount to \$1,921,424.28, based upon the Note. Borrower and Bank also entered into a  
22      Change in Terms Agreement modifying the Note. The Note was modified to increase the  
23      outstanding principal amount to \$1,921,424.28, to extend the Maturity Date to July 8, 2014, to  
24      release certain real property as collateral, to change the payment schedule to payments of  
25      principal and interest each month beginning August 8, 2011, and to change the variable interest  
26      rate to a fixed rate of 7.00% per annum on a 360-day year. A true and correct copy of the July 8,  
27      2011 Business Loan Agreement, Disbursement Request and Authorization, and Change in Terms  
28      Agreement is attached to the Noriega Declaration as **Exhibit "5"**.

7. To secure the Note, on or about September 3, 2008, Powell executed a Commercial Security Agreement in favor of the Bank. Also to secure the Note, on or about October 13, 2008, Borrower executed a Commercial Security Agreement in favor of the Bank. True and correct copies of the Commercial Security Agreements are attached to the Noriega Declaration as **Exhibit "6"**. The Commercial Security Agreements grant a security interest to the Bank in the following collateral (the "Collateral"):

All Inventory, Accounts, Equipment and General Intangibles recorded on May 13, 2008 filing no. 2008015389-7 with the Nevada Secretary of State

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

8. The Bank holds a properly perfected security interest in the Collateral as evidenced by the UCC-1 Financial Statements filed with the Nevada Secretary of State on May 13, 2008, as Document No. 2008015389-7, on September 12, 2008, as Document No. 2008028251-1, on October 16, 2009 as Document No. 2008032147-6, and on May 27, 2009, as



Document No. 2009013086-5. True and correct copies of the UCC-1s are attached to the Noriega Declaration as **Exhibit “7”**.<sup>1</sup>

9. The Loan was unconditionally guarantied by Powell pursuant to personal guaranties executed on October 13, 2008, February 27, 2009, and July 8, 2011 (collectively the “Guaranties”). True and correct copies of the Guaranties are attached to the Noriega Declaration as **Exhibit “8”**.

#### **THE LOAN DEFAULTS**

10. Borrower was in default under the Loan Documents by failing to pay, or cause to be paid, all of the past due amounts and cure all other defaults within the applicable cure period set forth in the Loan Documents. See Noriega Declaration.

11. After the defaults occurred, the Bank attempted to communicate with Borrower regarding the outstanding obligations owing to Bank, but after an initial meeting, Borrower failed and refused to produce promised financial statements and to respond to emails and telephone calls.

12. As a result of this lack of communication, on March 14, 2012, Bank sent to Borrower a notice of default and demand for payment letter (“Borrower Default Letter”) detailing the monetary defaults under the Loan Documents. A true and correct copy of the Borrower Default Letter is attached to the Noriega Declaration as **Exhibit “9”**.

13. On March 14, 2012, Bank also sent to Powell, as the Guarantor, a notice of default and demand for payment letter as a result of Borrower’s default (“Guarantor Default Letter”). A true and correct copy of the Guarantor Default Letter is attached to the Noriega Declaration as **Exhibit “10”**.

14. Notwithstanding the Borrower Default Letter and Guarantor Default Letter, Borrower and Powell failed and refused to pay the outstanding indebtedness, to provide any of the requested information, or to pay requested past due payments that I was willing to

<sup>1</sup> The Note, Business Loan Agreements, Disbursement Request and Authorizations, Changes In Terms Agreements, Commercial Security Agreements, UCC-1 Financial Statements, and all other loan documents evidencing, securing or modifying the Loan are referred to collectively as the “Loan Documents”.



1 recommend the Bank accept for an extension of the demand letter deadlines to allow more time  
2 to work out a possible solution.

3 **STATE COURT ACTION TO APPOINT RECEIVER**

4 15. On April 13, 2012, the Bank commenced an action in State Court in the Business  
5 Court Division of the Eighth Judicial District Court, Clark County, Nevada, for the appointment  
6 of a receiver.

7 16. On April 13, 2012, the Bank filed a Motion for Appointment of Receiver, or in  
8 the alternative, for Temporary Restraining Order, Preliminary and Injunctive Relief and  
9 Prejudgment Writ of Possession, which hearing was scheduled to be heard on April 24, 2012,  
10 and continued to May 10, 2012, due to a department reassignment.

11 **BANKRUPTCY**

12 17. On May 9, 2012 (the "Petition Date"), one day before the hearing on the Motion  
13 to Appoint Receiver, Powell Litigation filed a Chapter 7 bankruptcy petition for relief captioned  
14 *In re Powell Litigation Group, P.C.* (Case No. BK-S-12-15555-MKN) (the "PLG Bankruptcy"),  
15 currently pending in the United States Bankruptcy Court for the District of Nevada.

16 18. On October 10, 2012, David A. Rosenberg, the Chapter 7 Trustee (the "Trustee"),  
17 filed a Trustee's Notice of Assets and Notice to File Proof of Claim [Dkt. No. 83].

18 19. On October 11, 2012, the Bank filed a Proof of Claim [POC # 8], identifying its  
19 claim as of the Petition Date to be \$1,861,128.26, the total unpaid principal, interest, and late  
20 charges (exclusive of legal fees, costs and other charges and reserves) required under the Loan  
21 Documents are as follows:

22	Current Outstanding Principal:	\$1,786,468.53
23	Accrued Interest:	\$ 66,484.11
24	Late Charges:	\$ 8,128.62
25	UCC Fee:	\$ 47.00
26	Total Debt:	\$1,861,128.26

27 Interest continues to accrue on the unpaid principal balance at the default rate of \$595.49 per  
28 day. The daily regular interest was \$347.37. See Noriega Declaration.

1 **TRUSTEE'S ACCOUNTING**

2 20. In September 2012, the Trustee prepared an accounting report of the funds held in  
3 the IOLTA account, a true and correct copy of which is attached to the Noriega Declaration as  
4 **Exhibit "11"**.

5 21. According to the information provided by the Trustee, the estate currently holds  
6 \$2,615,823.64<sup>2</sup> in the IOLTA account for reimbursement of costs in litigation financed by Bank,  
7 some of which is subject to interpleader actions pending in state court commenced at the  
8 direction of the Trustee.

9 22. On September 26, 2012, counsel for the Bank met with counsel for the Trustee,  
10 Howard Kim, Esq., and Cody Sutton, who is employed by the Trustee, as well as counsel for the  
11 Glen Lerner Firm, Brigid Higgins, Esq. to receive clarification on the Trustee's accounting of the  
12 funds held in the IOLTA account Powell Litigation received settlements from which legal fees  
13 and costs from judgments in litigation were to be paid. These settlement funds and legal fees  
14 constitute the Bank's Collateral, but Powell Litigation failed to remit payment to Bank pre-  
15 petition.

16 23. Of the \$2,615,823.64 in the IOLTA Account, the Trustee's accounting reflects  
17 that there are \$416,521.01 in costs due and owing to Powell Litigation and \$96,282.28 in fees  
18 owing to Powell Litigation (the "PLG Funds").

19 24. Of the PLG Funds, \$220,021.19 of the funds are not subject to interpleader  
20 actions, consisting of \$190,651.31 of Costs due to Powell Litigation and \$29,369.88 due and  
21 owing to Powell Litigation for Fees. A true and correct copy of the chart identifying interpleader  
22 and non-interpleader funds is attached to the Noriega Declaration as **Exhibit "12"**.

23 **REQUEST FOR STAY TERMINATION FOR RELEASE OF PORTION OF IOLTA FUNDS**

24 25. The Bank is requesting an order terminating the automatic stay for payment in the  
25 amount of \$220,021.19 to the Bank from the IOLTA Account from the \$2,615,823.64 in the  
26

27 <sup>2</sup> The IOLTA Account is currently held with Bank of Nevada, and as of October 18, 2012, the balance held in the  
28 IOLTA Account is \$2,953,119.26. See Noriega Declaration.

1 IOLTA Account, which funds constitute a portion of the Bank's Collateral arising from the  
2 Bank's properly perfected security interest in all of the Debtor's "Accounts".

3 26. The Bank's Collateral includes, but is not limited to, the IOLTA Account, as set  
4 forth in the Commercial Security Agreements and UCC-1s, attached to the Noriega Declaration  
5 as **Exhibits "6" and "7"**, respectively.

6 27. The Bank is entitled to the \$416,521.01 in costs due and \$96,282.28 in fees held  
7 in the IOLTA Account designated in the Trustee's Report as PLG Funds, and by way of the  
8 Motion, is currently only seeking stay termination for payment of a portion of the funds in the  
9 IOLTA Account not subject to the pending interpleading actions. See Noriega Declaration.

10 28. In the event the automatic stay is terminated to allow the Bank to receive partial  
11 payment of \$220,021.19 from the IOLTA Account, \$292,782.10 of the funds designated in the  
12 Trustee's Report as PLG funds will remain in the IOLTA Account, which remaining funds are  
13 still the subject of pending interpleader actions. See Noriega Declaration.

14 29. Upon resolution of the remaining interpleading actions, the Bank will renew its  
15 Motion to Terminate the Automatic Stay for payment of the remaining funds in the IOLTA  
16 Account or any other funds to which the Bank is entitled pursuant to its properly perfected  
17 security interest. See Noriega Declaration.

18 **TRUSTEE HOLDING \$271,427.57 IN OPERATING ACCOUNT**

19 30. The Trustee, through his counsel, reported that he is currently holding  
20 \$271,427.57 in the Debtor's Operating Account, a portion of which is to be used by the Trustee  
21 to administer the estate, including, but not limited to, the pending interpleader actions, and any  
22 future preference and fraudulent transfer actions the estate may commence. See Atamoh  
23 Declaration.

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1 III.

2 **LEGAL ARGUMENT**

3 **A. Cause Exists to Terminate the Stay Under Sections 362(d)(1) Because the**  
 4 **Collateral is Fully Encumbered by the Bank's Properly Perfected, First Position**  
**Security Interest.**

5 The Bank requests relief from the automatic stay pursuant to section 362(d)(1) because  
 6 cause exists to terminate stay. Cause exists to terminate the stay under Section 362(d)(1) because  
 7 the Collateral at issue, consisting of all "accounts" of Powell Litigation, which includes the  
 8 IOLTA Account that is the subject of this Motion, is fully encumbered by the Bank's properly  
 9 perfected, first position security interest. Section 362(d)(1) provides as follows:

10 (d) On request of a party in interest and after notice and a hearing,  
 11 the court shall grant relief from the stay provided under subsection  
 12 (a) of this section, such as by terminating, annulling, modifying, or  
 conditioning such stay—

13 (1) for cause, including the lack of adequate protection of an  
 interest in property of such party in interest;

14 This is a Chapter 7 case, and the Bank's Collateral is fully encumbered, leaving no  
 15 benefit to the estate in connection with the PLG Funds designated in the Trustee's Report as  
 16 Powell Litigation funds. As set forth in greater detail in the Noriega Declaration, there is no  
 17 benefit to the estate for the Chapter 7 Trustee to liquidate and administer the Collateral, because  
 18 the Bank holds a properly perfected security interest in the Collateral consisting of Powell  
 19 Litigation's "accounts", which includes the funds in the IOLTA Account not attributable to  
 20 medical providers and patients. See Noriega Declaration.

21 No other creditors are entitled to receive any portion of the funds designated in the  
 22 Trustee's Report as the PLG Funds, consisting of \$416,521.01 in costs and \$96,282.28 in fees  
 23 owing to Powell Litigation, to which the Bank is entitled as a properly perfected secured  
 24 creditor. See Noriega Declaration. Because no other creditors are entitled to any portion of the  
 25 PLG Funds designated in the Trustee's Report, and there are sufficient funds in the Operating  
 26 Account to provide the Trustee with funds to administer the case and commence future litigation  
 27 in the bankruptcy case, the Bank's request to terminate the automatic stay to allow payment to  
 28

1 the Bank of a portion of the IOLTA Account not subject to any interpleader actions is  
2 appropriate at this time. See Noriega Declaration.

3 The Bank seeks an order from this Court terminating the automatic stay to allow the  
4 Trustee to pay the Bank a partial payment of \$220,021.19 from the IOLTA Account, leaving a  
5 balance of \$292,782.10 of the funds designated in the Trustee's Report as PLG Funds. The  
6 balance of \$292,782.10 will remain in the IOLTA Account subject to the resolution of pending  
7 interpleader actions. See Noriega Declaration. Thus, cause exists to terminate the stay under  
8 Section 362(d)(1).<sup>3</sup>

9 **B. Cause Exists to Waive the 14-Day Stay Under Rule 4001(a)(3).**

10 In addition to stay termination for payment of a portion of the Bank's Collateral, the  
11 Bank also seeks the waiver of the 14-Day stay of the order terminating the stay under Rule  
12 4001(a)(3). There is no legitimate reason for further delay in the Trustee's payment to the Bank,  
13 where there are no competing claims to the Bank's funds in the IOLTA Account as designated in  
14 the Trustee's Report as PLG Funds. See Noriega Declaration. The waiver of the 14-day stay of  
15 the order terminating the stay is appropriate, as the Bank is only seeking a partial payment of  
16 \$220,021.19 from the IOLTA Account to which no other creditor is entitled, resulting in a  
17 balance of \$292,782.10 of the funds designated in the Trustee's Report as PLG Funds, and  
18 leaving an overall balance of \$2,395,802.45 in the IOLTA Account. See Noriega Declaration.  
19 Because this is a Chapter 7 case, and there is no reorganization in the Debtor's case, the Bank  
20 requests that this Court waive the 14-Day stay under Rule 4001(a)(3), as there appears to be no  
21 reason to stay the order terminating the automatic stay. Under these circumstances, waiver of the  
22 14-day stay is appropriate.

23 ...

24 ...

25 ...

26  
27 <sup>3</sup> The Bank is not waiving its rights to the funds in the Operating Account, as the Bank's Security Agreement and  
28 filed UCC-1s entitle the Bank to a properly perfected, first position, security interest to all "Accounts" of PLG as  
Collateral, which accounts include the Operating Account and the IOLTA Account. See Noriega Declaration.

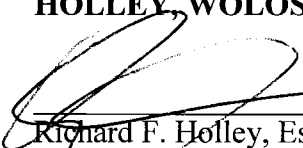
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**III. CONCLUSION**

Based upon the foregoing, cause exists to terminate the stay under Sections 362(d)(1), and for an order allowing the Bank to receive \$220,021.19 from the IOLTA Account, which funds constitute a portion of the Bank's Collateral pursuant to a properly perfected, first position security interest as set forth in the Commercial Security Agreements and UCC-1s. The Bank also seeks an order for the waiver of the 14-day stay of the order terminating the stay under Rule 4001(a)(3).

DATED this 18<sup>th</sup> day of October, 2012.

**COTTON, DRIGGS, WALCH,  
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